State of Michigan
Department of Environmental Quality
Water Resources Division

PUBLIC NOTICE

PROPOSED GENERAL PERMIT CATEGORIES FOR ACTIVITIES IN WETLANDS, INLAND LAKES, STREAMS AND THE GREAT LAKES

May 7, 2012

Pursuant to Part 301, Inland Lakes and Streams, Part 303, Wetlands Protection, and Part 325, Great Lakes Submerged Lands of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, the Department of Environmental Quality's Water Resources Division is proposing additions and changes to the existing General Permit (GP) categories. These categories are for activities that are similar in nature, will cause only minimal adverse effects on the environment when performed separately, and will have only minimal cumulative adverse effects on the environment. The intent of these categories is to allow better coordination between applicable statutes and to provide clarity on the requirements that must be met for each category. Permit applications made for these types of activities may be processed in an accelerated manner without the issuance of an individual public notice or public hearing. GP categories are issued for a five-year period. The purpose of this public notice is to provide an opportunity for public review and comment to proposed additions and changes to the existing GP categories only. The proposed GP categories can be found at www.michigan.gov/wetlands.

Written comments on the new Proposed General Permit Categories should be sent to:

Mr. Todd Losee
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Water Resources Division
P.O. Box 30458
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All comments must be received by Thursday, June 21, 2012.

This notice will be reviewed by federal agencies in accordance with an agreement with the United States Environmental Protection Agency, under provisions of Section 404 of the Federal Clean Water Act Amendments of 1977.

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING

RICK SNYDER
GOVERNOR

DAN WYANT
DIRECTOR

GENERAL PERMIT CATEGORIES IN THE STATE OF MICHIGAN

May 7, 2012 Draft

Deleted: October 31, 2011

Issued Under Part 301, Inland Lakes and Streams; Part 303, Wetlands Protection; and Part 325, Great Lakes Submerged Lands, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as Amended (NREPA)

BACKGROUND INFORMATION

PURPOSE

Part 301, Part 303, and Part 325 of the NREPA authorize the Department of Environmental Quality (DEQ), Water Resources Division (WRD), to define types of regulated activities that would be expected to cause no more than minimal impacts and that can, therefore, be reviewed through an expedited permit application process. This General Permit (GP) defines categories of activities that the WRD has determined to have minimal impacts and also defines the legal authority and limitations for use of this process. These categories do not alter or replace current exemptions, but provide a mechanism for expedited processing of certain activities that are not exempt.

The purpose of this GP is to allow the WRD to evaluate permit applications for many minor activities without the delay of public noticing or site inspecting specific projects. The objective of this GP is to reduce the time and cost of the permit process for applicants proposing minor activities and to reduce the costs of administering the program while protecting aquatic resources.

Please note that this GP does not define projects that will be authorized, but only those that may be considered for accelerated processing. Applications under this GP may be issued, modified, or denied. Authorization will be issued only if it is determined that the proposed activity is in accordance with the criteria and requirements of the NREPA.

GENERAL PERMIT PROCEDURES

A person seeking an authorization under this GP must submit a permit application on a form supplied by the WRD at www.michigan.gov/jointpermit. A preliminary determination of whether an application may be processed under this GP is made by WRD staff when the application is received. Applications processed under GP procedures are typically reviewed without issuance of a public notice. However, before authorizing a specific project to proceed under a general permit, the WRD may provide public notice but will not hold a public hearing and will not typically require a site inspection. The DEQ will provide written authorization for an approved project, or will otherwise notify the applicant in writing of the decision on the application.

If at any time in the review process, it is determined that an activity in a proposed project, although within a GP category, is likely to cause more than minimal adverse effects on the environment or aquatic resources, including high value aquatic habitats, the WRD may require the application be processed as an individual permit application. The processing as an individual permit application may require the applicant to provide additional information and an additional application fee.

REGULATORY AUTHORITY

Part 301 (Section 30105), Part 303 (Section 30312), and Part 325 (Section 32512) provide that the WRD, after notice and opportunity for a public hearing, may issue general permits on a statewide basis for a category of activities that are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment. A general permit cannot be valid for more than 5 years.

GENERAL CRITERIA FOR REVIEW

Part 301, Part 303, and Part 325 specify the criteria that must be met before an authorization may be issued. These general criteria, as well as the specific criteria detailed later in this GP, must be met before the WRD can issue an authorization under this GP.

Under Part 303, the WRD will issue an authorization under a GP if the requirements of the GP and the NREPA are met. However, in determining whether to issue an authorization under a general permit, the WRD shall not consider off-site alternatives to be feasible and prudent alternatives under Part 303. Compensatory wetland mitigation cannot be required as part of an authorization under this GP. Under Part 301 and Part 325, off-site alternatives can be considered. Compensatory mitigation can be provided under Part 301.

EXCLUSIONS

The types of activities described in this document can typically be processed under GP procedures. However, some activities will not qualify for this type of processing even if the listed criteria are met. Applications will not qualify for consideration under these categories if:

A) It is determined that the proposed project would constitute a "major discharge of dredged or fill materials" or meets other criteria subject to federal review as defined in the Memorandum of Agreement between the DEQ and the U.S. Environmental Protection Agency, unless other alternative coordination is allowed within a specific category.

B) The activity is associated with sensitive natural resources including:

1. A federally designated wild and scenic river.
2. A state or federally designated wilderness or environmental area.
3. A federally designated marine sanctuary.
4. A state or federally listed or proposed threatened or endangered species (unless alternative procedures developed by the WRD are followed to coordinate with federal agencies, or the landowner has obtained a letter of no impact from the Department of Natural Resources [DNR]).
5. An identified historic or archeological area.
6. An identified recharge area for drinking water aquifers.
7. An identified rare or unique ecological type.

C) Sediment testing is required per WRD procedures and testing results have not been provided by the applicant OR Sediment testing per WRD procedures show that the material contains toxic pollutants.

D) The WRD determines that a specific activity that would generally qualify under a GP category would, due to the proximity of other projects and the characteristics of the aquatic resources, cause more than minimal adverse environmental effects.

E) The project also requires a permit under Part 31, Water Resources Protection; Part 301; Part 303; Part 315, Dam Safety; or Part 325 of the NREPA but does not meet one of the GP or minor project (MP) categories under those parts.

F) The project also requires a permit under Part 323, Shorelands Protection and Management; or Part 353, Sand Dunes Protection and Management, of the NREPA.

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NEED FOR OTHER PERMITS

An authorization under this GP does not remove the need for other applicable local, state, or federal permits.

EXPIRATION DATE

The categories in this GP modify and replace all existing GP categories under Part 301, Part 303, and Part 325, except for the GP category for Limited Great Lakes Shoreline Management Activities, and shall expire on August 11, 2016, unless revoked or modified before that date.

Issued by: _____ Date: _____

William Creal, Chief
Water Resources Division
Department of Environmental Quality

INDEX OF GENERAL PERMIT CATEGORIES

WILL BE UPDATED WITH NEW PAGE NUMBERS.

GENERAL PERMIT CATEGORIES

The following activities are incorporated into this list of GP categories. The proposed activity must meet the specific criteria of a category in addition to the General Criteria, Exclusions, and General Conditions. Each category lists the statute(s) to which it applies.

A. Aids to Navigation

NO CHANGES PROPOSED.

B. Amateur Recreational Gold Prospecting

NO CHANGES PROPOSED.

C. Clear Span Bridge

NO CHANGES PROPOSED.

D. Culvert Cleanout

NO CHANGES PROPOSED.

E. Culverts - Small

Category applies to:
☒ *Part 301, Inland Lakes and Streams*
☐ *Part 303, Wetlands Protection*
☐ *Part 325, Great Lakes Submerged Lands*

New or replacement culverts that are 6 feet or less in span and 30 feet or less in length that meet all of the following:

- The culvert must be bottomless (3-sided), or if the structure has a bottom then the invert elevation must be buried below the stream bottom 1/6 of the bankfull width up to a maximum buried depth of 1-foot. For streams with a bankfull width of 3 feet or less, the DEQ may determine that burial is not required in non-alluvial channels (e.g., bedrock substrate).
- The culvert spans a minimum of bankfull width.
- The culvert is aligned with the centerline of the stream at both the inlet and outlet ends. Meanders upstream or downstream of the culvert shall not be eliminated.
- For replacements, the existing culvert cannot be perched (i.e., a culvert with an outlet invert elevated above the downstream water surface, allowing a freefall condition).
- The culvert must be placed at a flat slope, unless a steeper slope is approved by the DEQ, or for legally established drains, at an approved design slope. For stream crossings with an approximate slope of 3% or greater, as determined by the DEQ, the structure must be bottomless (or a clear span bridge) to be included in this GP category.
- The placement of riprap shall be limited to the minimum necessary to ensure proper stabilization of the side slopes and fill in the immediate vicinity of the culvert. Riprap shall not extend upstream or downstream of the culvert more than 25 feet on each end. Riprap shall be properly sized based on velocity and consist of natural field stone or rock (broken concrete is not allowed). Natural field stone or rock includes crushed quarry rock. Broken concrete, free of protruding metal, contaminants, and other foreign material, may be allowed in legally established drains, except those constituting mainstream portions of certain natural watercourses identified in rule.

Bankfull is the width of the stream that corresponds to the depth where water fills a main channel to the point of overflowing. In instances were the applicant is unsure of the bankfull width, it is recommended that the applicant contact DEQ staff and request a preapplication site review. In legally established drains

(except those constituting mainstream portions of certain natural watercourses identified in rule), if bankfull indicators are not present, the structure span may be determined by calculating the 1.5-year stream width at the 1.5-year flow that is based on a stable stream width and depth.

For stream crossing locations where the drainage area is 2 square miles or greater, the crossing must meet one of the following:

1. The applicant must submit, and receive DEQ approval of, a certification by a licensed engineer with supporting hydraulic computations stating that either the replacement structure, including any weir flow, is designed with equal or greater hydraulic capacity that does not cause a harmful interference OR a new structure, including weir flow, is designed to pass the 100-year flood without causing a harmful interference.
2. For replacement culverts:
   - The proposed structure must have an equal or greater hydraulic capacity when compared to the existing culvert.
   - The proposed road grade shall not exceed that of the existing road grade by more than 4 inches, unless the road grade has been shown to be above the 100-year floodplain elevation.
3. For new culverts:
   - The fill over the culvert is not more than 1.5 feet.
   - The approach fill slopes to natural ground elevations within 10 feet of either side of the structure, unless the fill has been shown to be above the 100-year floodplain elevation.

F. Dry Fire Hydrant

NO CHANGES PROPOSED.

G. Maintenance Dredging on the Great Lakes and Section 10 Waters

Category applies to: ☒ *Part 301, Inland Lakes and Streams*
☐ *Part 303, Wetlands Protection*
☒ *Part 325, Great Lakes Submerged Lands*

Excavation and removal of accumulated sediment for maintenance of previously dredged areas that meet all the following:

- For Part 301 of the NREPA, this GP includes only Section 10 waters under the federal Rivers and Harbors Act of 1899.
- Dredging shall be limited to a maximum of 100 cubic yards per 5-year period.
- Dredging shall be limited to previously authorized depths or controlling depths for ingress/egress, whichever is less.
- Only 1 permit under this GP category may be authorized on the same parcel of property within any 5-year period.
- If sediment testing is required, testing in accordance with WRD procedures showing that the material does not contain toxic pollutants has been provided by the applicant. All dredged or excavated materials shall be disposed of in an identified upland (nonfloodplain, nonwetland) site.
- This GP category does not include dredging in wetlands.

Deleted: The activity will not disturb sediments in an area known or suspected to contain toxic pollutants (unless testing accordance with WRD procedures provided by the applicant shows that the material does not contain toxic pollutants).¶

H. Maintenance of Storm Water Management Facilities: Wetlands

NO CHANGES PROPOSED.

I. Maintenance: Wetlands

NO CHANGES PROPOSED.

J. Minor Permit Revisions and Transfers

NO CHANGES PROPOSED.

K. Moist Soil Management for Wildlife

NO CHANGES PROPOSED.

L. Pipeline Safety Program Designated Time Sensitive Inspections and Repairs

Category applies to: ☒ *Part 301, Inland Lakes and Streams*
☒ *Part 303, Wetlands Protection*
☐ *Part 325, Great Lakes Submerged Lands*

Maintenance and repair of oil and gas pipelines that cross inland lakes, streams, and wetlands, in particular, as required by the provisions of the Pipeline Safety Improvement Act of 2002, that meet all of the following:

- The repair and replacement using the best available construction technologies that are necessary to avoid and minimize impact when considering the wetlands and waters involved. Additional precautions and construction techniques may be necessary in areas of high quality resources.
- Stream crossing shall use dry ditch open trenching, and shall be limited to 50 feet per crossing (bank to bank) and a cumulative total of 200 feet per application.
- Wetland crossings using open trenching shall be limited to total cumulative crossing length of 500 feet per application.
- All pipeline repair and maintenance projects shall follow the relevant and appropriate procedures and best management practices (BMPs) outlined in the Federal Energy Regulatory Commission's "Wetland and Waterbody Construction and Mitigation Procedures," dated January 17, 2003, or an equivalent manual of procedures and BMPs approved in advance by the WRD. Site access and preparation, pipeline repair or installation, and site restoration must be sequenced and carried out in accordance with these procedures and BMPs in order to minimize soil erosion and siltation, the introduction of nonnative and invasive species, drainage of wetlands via the pipeline conduit, and other adverse impacts to aquatic resources. The specific repair procedure that will be used once a pipeline is exposed at a given crossing does not have to be identified in advance of authorization under this GP category as long as such procedures are included in the approved BMP manual. This GP category does not mandate the presence of environmental inspectors at all times, but an inspector must be available to ensure compliance with BMPs.
- Damaged pipeline must be replaced in the same location where it is feasible and prudent to do so, unless it can be demonstrated that relocation of the pipeline will result in an overall reduction of adverse impacts to aquatic resources. Where damaged pipeline must be replaced in a new location, that location must be selected to minimize overall environmental impact of the project.
- Where drilling mud is being used, 2 properly installed rows of silt fencing must be installed around entry/exit points of the bore. A plan for preventing and controlling the loss of drilling mud into any waters of the state must be submitted. The plan should include steps that will be taken to minimize any impacts to any waters of the state caused by an accidental release of drilling mud. Any unintended release of drilling mud shall be immediately reported to WRD staff, and additional drilling shall be discontinued while the material that was released is controlled. Cleanup of drilling mud that impacts water resources, including wetlands, shall be initiated and completed in an expeditious manner.
- When a plowing-in method is used in wetlands, the area must be immediately restored to grade after installation.
- All revegetation of wetland sites must be with plant species that are native to Michigan according to the Floristic Quality Assessment for the State of Michigan.
- The construction of new permanent access roads is not included under this GP category. Where needed, timber construction mats may be authorized under this category.

This GP category does not alter or replace current exemptions, but provides a mechanism for authorization of repairs for pipelines that do not meet the criteria for exempt activities and, in particular, coordinates authorization of pipeline repairs that impact both wetlands and other waterbodies.

M. Public Transportation Projects

NO CHANGES PROPOSED.

N. Recreational Facilities: Boardwalks, Platforms, and Walkways

NO CHANGES PROPOSED.

O. Scientific Measuring Devices

NO CHANGES PROPOSED.

P. Soil Borings

NO CHANGES PROPOSED.

Q. Survey Activities

NO CHANGES PROPOSED.

R. Utility Line Activities

Category applies to: ☒ *Part 301, Inland Lakes and Streams*
☒ *Part 303, Wetlands Protection*
☐ *Part 325, Great Lakes Submerged Lands*

Activities required for the construction, maintenance, repair, and removal of utility lines by directional drilling/jack and bore crossings of wetlands, inland lakes, and streams.

A "utility line" is any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term "utility line" does not include activities that drain a water of the State, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

This category includes the installation, maintenance, repair, and removal of utility lines by directional drilling/jack and bore provided there is no change in the preconstruction grade, that meet all the following:

- Crossing locations shall be selected to minimize the impact to the wetlands, inland lakes and streams.
- The outside diameter of the pipe, cable, encasement, etc. shall not exceed 20 inches.
- A minimum of 36 inches of cover will be maintained between the top of the cable or pipe and the soil surface. Access areas (e.g., sealed manhole) may be allowed in wetlands if impacts are avoided and minimized.
- All re-vegetation of wetland sites must be with plant species that are native to Michigan according to the Floristic Quality Assessment for the State of Michigan.
- The construction of new permanent access roads is not included under this GP category.
- There are no limits on the distance of the crossing of wetlands, inland lakes or streams using directional boring or jack and bore methods.
- The entrance and exit locations of the bore shall be located outside of any wetland (unless it is not feasible based on boring distance or method), inland lake and streams, and isolated using double rows of properly installed silt fencing. Any temporary fill for access must meet the Temporary Construction, Access and Dewatering Minor Project Category.
- A plan for preventing and controlling the loss of drilling mud into any waters of the state must be submitted. The plan should include steps that will be taken to minimize any impacts to any waters of the state caused by an accidental release of drilling mud. Any unintended release of drilling mud shall be immediately reported to WRD staff, and additional drilling shall be discontinued while the material that was released is controlled. Cleanup of drilling mud that impacts water resources, including wetlands, shall be initiated and completed in an expeditious manner
- Use of directional drilling/jack and bore should be given particular emphasis in any area that is prone to erosion, on slopes upgradient from coldwater streams, in forested wetland habitat, in high quality wetlands or wetland types that are locally or regionally uncommon.

S. Wetland Habitat Restoration and Enhancement

NO CHANGES PROPOSED.

T. Snow Road Stream Crossings for Forestry Operations

Category applies to:
☒ *Part 301, Inland Lakes and Streams*
☐ *Part 303, Wetlands Protection*
☐ *Part 325, Great Lakes Submerged Lands*

Seasonal culverts that are 3 feet or less in span and 30 feet or less in length that meet all of the following:

- The culvert must pass normal winter stream flows.
- The culvert must be part of a winter snow road.
- The snow road must be part of an ongoing timber harvest. .
- The stream crossing shall be constructed after the onset of freeze conditions and must be removed prior to spring thaw.
- Snow used to construct the crossing shall be clean (i.e., free of dirt, rocks, and soil).
- The crossing may include corduroy (e.g., pulp stringers) over the culvert to ensure stability.
- The stream crossing locations must have a drainage area of 2 square miles or less.

U. Diver-assisted Hand Removal of Invasive Species

Category applies to:
☒ *Part 301, Inland Lakes and Streams*
☐ *Part 303, Wetlands Protection*
☐ *Part 325, Great Lakes Submerged Lands*

Diver-assisted hand removal of non-native invasive species in inland lakes and impoundment in a total area not to exceed 800 square feet per year per for single-family residence, that meets the following:

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- Non-native invasive submergent plants shall be pulled by hand. Removal of emergent or native vegetation is not included in this category. Invasive plant species are species that have aggressive growth characteristics and threaten native ecosystems by dominating the normal vegetation of an area (e.g., Eurasian Watermilfoil). Photographs showing the plant(s) to be controlled must be submitted by the applicant. Removal must occur during the growing season when the non-native invasive species can be properly identified.

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- A small hand tool may be used to assist in pulling out the plant and roots.
- Once the plants have been removed by hand, a hose attached to a suction dredge may be used to transport the plants to the water surface for immediate collection. The suction hose shall not be used to remove plants or roots from the bottom sediments or to suction bottom sediments. Dragging of the suction hose on the bottom shall be minimized.
- All plant fragments must be contained and collected. Plants must be disposed of at an upland location.
- A turbidity curtain may be required by the DEQ.

GENERAL CONDITIONS

NO CHANGES PROPOSED.

AUTHORIZATION CONDITIONS

NO CHANGES PROPOSED.